

9163230438

Enforcement

DMHC

01:23:24 p.m

06-27-2008

2/2

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Prime Healthcare Services, Inc., a corporation; Prime Healthcare Anaheim, LLC, a limited liability company; Prime HealthCare La Palma, LLC, a limited liability company; Prime Healthcare Huntington Beach, LLC, a limited liability company; and DOES 1-100, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

California Department of Managed Health Care

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 27 2008

ALAN SLATER, Clerk of the Court

BY: M. WILSON, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court County of Orange, Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92702

CASE NUMBER:
(Número del Caso):

30-2008

JUDGE GREGORY H. LEWIS

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael D. McClelland, Department of Managed Health Care
980 Ninth Street, Sacramento, CA 95814, (916) 323-0435

DATE: JUN 27 2008

(Fecha)

ALAN SLATER

Clerk, by
(Secretario)

MELISSA WILSON

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- | | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

- ☐ by personal delivery on (date):

Page 1 of 1

30-2008
00108627

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael D. McClelland, SBN 204228 Department of Managed Health Care 980 9th Street, Suite 500 Sacramento, CA 95814 TELEPHONE NO.: (916) 323-0435 FAX NO.: (916) 323-0438 ATTORNEY FOR (Name): Plaintiff, Department of Managed Health Care		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER JUN 27 2008 ALAN SLATER, Clerk of the Court BY: <u>M. WILSON</u> DEPUTY CASE NUMBER: 30-2008 00108627 JUDGE: GREGORY H. LEWIS DEPT. C26
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: P.O. Box 838 CITY AND ZIP CODE: Santa Ana, CA 92702-0838 BRANCH NAME: Central Justice Center		
CASE NAME: Dep't. of Managed Health Care v. Prime Healthcare Services, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|--|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input checked="" type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 26, 2008

Michael D. McClelland

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

1 AMY L. DOBBERTEEN
 Assistant Deputy Director, Bar No. 155111
 2 DEBRA L. DENTON
 Assistant Chief Counsel, Bar No. 164482
 3 MICHAEL D. MCCLELLAND
 Senior Counsel, Bar No. 204223
 4 DREW BRERETON
 Staff Counsel, Bar No. 213277
 5 CALIFORNIA DEPARTMENT OF
 MANAGED HEALTH CARE
 6 980 Ninth Street, Suite 500
 Sacramento, CA 95814-7243
 7 Telephone: (916) 323-0435
 Facsimile: (916) 323-0438
 8

Attorneys for
 9 DEPARTMENT OF MANAGED HEALTH CARE

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 IN AND FOR THE COUNTY OF ORANGE
 12

13 California Department of Managed Health
 Care,

14 Plaintiff,

15 v.

16 Prime Healthcare Services, Inc., a corporation;
 17 Prime Healthcare Anaheim, LLC, a limited
 liability company; Prime HealthCare La
 18 Palma, LLC, a limited liability company;
 Prime Healthcare Huntington Beach, LLC, a
 19 limited liability company; and
 DOES 1-100, inclusive,

20 Defendants.
 21
 22

Case No.:

30-2008

00108627

CIVIL COMPLAINT FOR CIVIL
 PENALTIES AND INJUNCTIVE RELIEF

(Health & Saf. Code §§ 1379, 1387, 1392)

(Unlimited jurisdiction)

Exempt from Fees
 (Gov. Code § 6103)

JUDGE GREGORY H. LEWIS
 DEPT. C26

23 Comes now Plaintiff CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE
 24 (DMHC) and complains of Defendants PRIME HEALTHCARE SERVICES, INC. (PRIME
 25 INC); PRIME HEALTHCARE ANAHEIM, LLC; PRIME HEALTHCARE LA PALMA, LLC;
 26 PRIME HEALTHCARE HUNTINGTON BEACH, LLC; and DOES 1-100 as follows:

27 ///

28 ///

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER

JUN 27 2008

ALAN SLATER, Clerk of the Court

BY: M. WILSON, DEPUTY

PARTIES

1. Plaintiff DMHC is the state agency charged with enforcement of the Knox-Keene Health Care Service Plan Act of 1975 (the Act), Health and Safety Code, section 1340 et seq.

2. Defendant PRIME INC is a Delaware Corporation with its principal place of business in the County of San Bernardino.

3. Defendant PRIME HEALTHCARE ANAHEIM, LLC is a Delaware limited liability company believed to be doing business as West Anaheim Medical Center. PRIME HEALTHCARE ANAHEIM, LLC is believed to be owned, operated, and/or controlled by Defendant PRIME INC.

4. Defendant PRIME HEALTHCARE LA PALMA, LLC is a Delaware limited liability company believed to be doing business as La Palma Intercommunity Hospital. PRIME HEALTHCARE LA PALMA, LLC is believed to be owned, operated, and/or controlled by Defendant PRIME INC.

5. Defendant PRIME HEALTHCARE HUNTINGTON BEACH, LLC is a Delaware limited liability company believed to be doing business as Huntington Beach Hospital. PRIME HEALTHCARE HUNTINGTON BEACH, LLC is believed to be owned, operated, and/or controlled by Defendant PRIME INC.

6. Each Defendant-hospital in this matter is a provider of health care services within the meaning of the Act, Health and Safety Code section 1345(i).

7. Plaintiff DMHC is informed and believes and thereupon alleges that PRIME HEALTHCARE ANAHEIM, LLC; PRIME HEALTHCARE LA PALMA, LLC; and PRIME HEALTHCARE HUNTINGTON BEACH, LLC are wholly owned, operated and controlled by Defendant PRIME INC and or its executives, officers, and board members. The limited liability company defendants share in whole or in part with PRIME INC the same officers, owners, board members, and attorneys. Defendant PRIME INC in fact proclaims that it is the owner and operator of the three Orange County hospitals purportedly owned by the limited liability company defendants.

1 8. Plaintiff DMHC is informed and believes and thereupon alleges that the limited liability
2 companies are a mere shell, instrumentality, or conduit for the business ventures of PRIME INC
3 and its officers, shareholders, and/or board members.

4 9. The business activities, conduct, and actions of each of the limited liability company
5 Defendants share a unity of interest with Defendant PRIME INC such that PRIME
6 HEALTHCARE ANAHEIM, LLC; PRIME HEALTHCARE LA PALMA, LLC; and PRIME
7 HEALTHCARE HUNTINGTON BEACH, LLC are the alter ego, independently and
8 collectively, of PRIME INC.

9 10. The true names and capacities, whether individual, corporate, or otherwise, of
10 Defendants sued herein under the fictitious names of DOES 1 through 100, inclusive, are
11 unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff will
12 amend this complaint to show the true names of each when the same has been ascertained.
13 Defendants sued herein as DOES 1 through 100 are, and at all relevant times were, engaged with
14 Defendant PRIME INC in the development, planning, and placement of the activities complained
15 of herein and as such directed, managed, controlled, or otherwise engaged in the conduct
16 complained of herein.

17 JURISDICTION AND VENUE

18 11. Plaintiff reincorporates and realleges Paragraphs 1-10 as if restated fully herein.

19 12. Plaintiff is authorized to bring this action against Defendants as persons who have
20 violated the Act, pursuant to Health and Safety Code sections 1387 and 1392.

21 13. Plaintiff is informed and believes and thereupon alleges that a substantial number the
22 actions complained of herein resulted from services rendered by PRIME INC-owned or affiliated
23 hospitals located within this judicial district, specifically, West Anaheim Medical Center, La
24 Palma Intercommunity Hospital, and Huntington Beach Hospital.

25 14. Plaintiff is informed and believes and thereupon alleges that a substantial number of
26 the violations of the Act complained of herein involved health plan enrollees residing in Orange
27 County.
28

1 15. Plaintiff is informed and believes and thereupon alleges that a substantial number of
2 the witnesses and evidence in this case are located within this judicial district.

3 16. A substantial amount of PRIME INC's and Defendants' liability in this matter arises
4 as a direct and proximate result of its owned or affiliated hospitals located in Orange County,
5 specifically, West Anaheim Medical Center, La Palma Intercommunity Hospital, and Huntington
6 Beach Hospital.

7 17. The implied contract between Defendant hospitals, and California licensed health
8 plans, including Kaiser Foundation Health Plan (Kaiser), involves at least three Orange County-
9 based hospitals.

10 18. Pursuant to Health and Safety Code, section 1387, jurisdiction is appropriate in *any*
11 court of competent jurisdiction.

12 INTRODUCTION

13 19. Plaintiff reincorporates and realleges Paragraphs 1-18 as if restated fully herein.

14 20. PRIME INC is a hospital management company which currently owns and operates
15 nine acute care hospitals in Southern California including Huntington Beach Hospital in
16 Huntington Beach, La Palma Intercommunity Hospital in La Palma, and West Anaheim Medical
17 Center in Anaheim.

18 21. Each of PRIME INC's hospitals operates an emergency room providing emergency
19 care services to the public, including to health plan enrollees. Each hospital is required by state
20 and federal law; Health and Safety Code section 1317 and 42 U.S.C., section 1395dd et seq.
21 (EMTALA), to provide emergency services to any person seeking such emergency treatment,
22 regardless of that person's ability to pay.

23 22. The Act regulates health care service plans (health plans) in California. A health plan
24 is a form of health care coverage commonly referred to as an HMO (health maintenance
25 organization). A health plan's distinguishing characteristics include that it is a prepaid plan and
26 the plan maintains a network of providers who have agreed to see the plan's enrollees at a fixed
27 cost. In other words, a health plan enrollee is obligated to pay premiums and select copayments,
28

1 but is otherwise fully covered for health care services, including emergency services, rendered
2 by the plan's "network" providers.

3 23. Under California law, Health and Safety Code, sections 1367(i), 1371.4(b); and
4 California Code of Regulations, title 28, section 1300.71(a)(3)(B), health plans are required to
5 cover an enrollee's emergency services. Where a health plan enrollee receives emergency
6 services from a non-network provider, the health plan remains obligated to pay for those
7 emergency services. A health plan is required to reimburse a non-network emergency care
8 provider in an amount that is a reasonable and customary value of the services rendered.

9 24. In some instances, the health plan's payment to a non-network emergency service
10 provider will be less than the amount billed for by the provider. In these situations, there is a
11 balance remaining on the provider's billed charge. PRIME INC, its affiliates, subsidiaries, and
12 agents have collected or attempted to collect the balance left owing on the bill from health plan
13 enrollees. This practice is known in the healthcare industry as "balance billing."

14 25. Defendants' hospitals provide emergency services to many individuals who are also
15 health plan enrollees including, but not limited to, Kaiser's enrollees. Under California law,
16 Health and Safety Code section 1371.4, 1345(b)(6), 1367(i) every health plan is required to pay
17 for emergency services rendered to its enrollees regardless of whether the emergency service
18 provider is a "network" provider of the health plan.

19 26. Plaintiff is informed and believes and thereupon alleges that for each of the violations
20 alleged herein, PRIME INC and its owned and affiliated hospitals were not network providers of
21 the health plan involved.

22 FIRST CLAIM FOR RELIEF

23 (Health & Saf. Code, §§ 1379, 1387)

24 27. Plaintiff reincorporates and realleges Paragraphs 1-26 as if restated fully herein.

25 28. Defendant PRIME INC and its affiliates and subsidiaries have rendered emergency
26 services to thousands of health plan enrollees, including, but not limited to, Kaiser enrollees.

27 29. Health plans licensed by the DMHC, including but not limited to Kaiser, have
28 reimbursed Defendants directly for emergency services rendered to health plan enrollees.

1 30. In consideration of the PRIME INC providers rendering emergency services to health
2 plan enrollees, health plans, including but not limited to Kaiser, provide reimbursement for these
3 services.

4 31. Defendants routinely and as a course of business render emergency services to health
5 plan enrollees. Health plans routinely and as a course of conduct and business practice
6 reimburse Defendants for these emergency services.

7 32. Based on the reciprocal obligations imposed by state and federal law for: a)
8 Defendants to render emergency services; and b) for health plans to reimburse Defendants for
9 emergency services rendered, Defendants and various health plans including, but not limited to,
10 Kaiser, have entered into a course of conduct manifesting each parties' agreement that
11 Defendants will render emergency services to health plan enrollees and health plans such as
12 Kaiser will reimburse Defendants for emergency services.

13 33. Plaintiff DMHC, therefore alleges there exists an implied in fact contract between
14 Defendants and various health plans including, but not limited to, Kaiser.

15 34. Defendant PRIME INC and its affiliates and subsidiaries have rendered emergency
16 services to thousands of health plan enrollees, including, but not limited to, Kaiser enrollees.
17 Defendants have taken these actions in whole or in part because of their obligation to do so,
18 compelled by EMTALA and Health and Safety Code section 1317.

19 35. Health plans licensed by the DMHC, including but not limited to Kaiser, have
20 reimbursed Defendants directly for these emergency services. Health plans have taken these
21 actions in whole or in part because of the obligations to do so imposed by Health and Safety
22 Code sections 1371.4, 1367(i), and 1345(b)(6).

23 36. As a direct and proximate result of each party's reciprocal legal obligations, each
24 party receives consideration for its promises: Defendants receive compensation from health
25 plans and health plans receive emergency services provided to their enrollees.

26 37. Plaintiff DMHC, therefore alleges there exists an implied in law contract between
27 Defendants and various health plans including, but not limited to, Kaiser.
28

1 38. Plaintiff is informed, and believes, and thereupon alleges that Defendants have
2 collected or attempted to collect the balances owing from as many as 6,000 Kaiser health plan
3 enrollees. Defendants' actions include, but are not limited to, the conduct described in Exhibit A
4 attached and incorporated hereto by this reference.

5 39. Defendants and their agents, contractors, and affiliates have balance billed enrollees
6 through various means including, but not limited to, the use of debt collection agencies. The
7 amounts sought by Defendants through these billing/collections means are sums which are owed,
8 if at all, by the health plan.

9 40. Defendants, through affiliated or contracted collection agencies have threatened the
10 credit ratings of health plan enrollees in an effort to collect on bills for emergency services.

11 41. Plaintiff is informed and believes and thereupon alleges that the threat of negative
12 credit ratings poses a substantial, irreparable, and unjustified threat to many health plan
13 enrollees' financial livelihood. A negative credit rating may affect an enrollee's ability to tap
14 needed credit lines or injure the ability to make purchases of real property, automobiles, or other
15 consumer necessities. A health plan enrollee may pay the bill directly to avoid this harm and
16 thereby suffer loss. An injury to an enrollee's credit rating is neither easily or practically
17 remediable.

18 42. Plaintiff has received dozens of complaints of balance billing by PRIME INC's nine
19 hospitals from health plan enrollees of at least Kaiser, Anthem Blue Cross, California Physicians
20 Service d/b/a Blue Shield of California, Aetna, PacifiCare of California, Cigna, Health Net, and
21 United Healthcare.

22 43. Pursuant to Health and Safety Code section 1379, no provider who has a contract with
23 a health plan may collect or attempt to collect from an enrollee, sums owed by the health plan.

24 44. PRIME INC and its affiliates and subsidiaries are parties to an implied in fact contract
25 with health plans including, but not limited to, Kaiser.

26 45. PRIME INC and its affiliates and subsidiaries are parties to an implied in law contract
27 with health plans including, but not limited to, Kaiser.
28

1 46. The costs of the emergency services rendered by Defendants to health plan enrollees
2 are sums owed by the enrollees' respective health plans.

3 47. Defendants, and each of them, have collected or attempted to collect the cost of
4 emergency services from health plan enrollees themselves.

5 48. Pursuant to Health and Safety Code section 1387(a), Plaintiff may seek a civil penalty
6 of \$2,500 for each violation of section 1379 proved at trial, which is believed to be an amount in
7 excess of the jurisdictional minimum of this Court.

8 **SECOND CLAIM FOR RELIEF**

9 **(Health & Saf. Code, §§ 1379, 1392)**

10 49. Plaintiff reincorporates and realleges Paragraphs 1-48 as if restated fully herein

11 50. PRIME INC and its affiliates and subsidiaries are parties to an implied in fact contract
12 with health plans including, but not limited to, Kaiser.

13 51. PRIME INC and its affiliates and subsidiaries are parties to an implied in law contract
14 with health plans including, but not limited to, Kaiser.

15 52. The cost of the emergency services rendered by Defendants to health plan enrollees
16 are sums owed by the health plans.

17 53. Defendants and each of them have collected or attempted to collect the cost of
18 emergency services from health plan enrollees themselves.

19 54. Plaintiff is informed and believes and thereupon alleges that the practices of PRIME
20 INC and Defendants complained of herein are systemic, intentional, and concerted amongst each
21 and every hospital controlled, affiliated, or owned by PRIME INC.

22 55. Pursuant to Health and Safety Code section 1392(a)(1), Plaintiff is entitled to an Order
23 enjoining any violation of the Act.

24 **PRAYER**

25 **WHEREFORE**, Plaintiff prays as follows:

26 1. For a civil penalty of \$2,500 per violation of the Knox-Keene Act proved at trial.

27 ///

28 ///

1 2. For an Order enjoining Defendants from engaging in the acts, practices, and conduct
2 constituting the bases for violations of the Act as proved at trial. Plaintiff requests a preliminary
3 injunction enjoining Defendants and each of them from balance billing any health plan enrollee.

4 3. For an Order enjoining Defendants from engaging in the acts, practices, and conduct
5 constituting the bases for violations of the Act as proved at trial. Plaintiff requests a permanent
6 injunction enjoining Defendants and each of them from balance billing any health plan enrollee.

7 4. For other such relief the Court deems just and proper.

8
9 Dated: June 26, 2008

DEPARTMENT OF MANAGED
HEALTH CARE

10
11
12 By: 

13 MICHAEL D. MCCLELLAND
14 Senior Counsel
15 Attorneys for the Department of
16 Managed Health Care
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THE ORANGE COUNTY
REGISTER
 ocregister.com

Thursday, May 8, 2008

Kaiser Permanente members targeted in hospital billing dispute

6,000 Southern California residents have received bills that Kaiser and the state say they do not owe.

BY COURTNEY PERKES

The Orange County Register

David Fowlkes returned home from work last year to find his wife, Vicki, unconscious on the couch.

An ambulance rushed her to the emergency room at West Anaheim Medical Center. The couple paid their portion of the bill – a \$250 deductible – and six days later, Vicki was released after treatment for respiratory distress.

But late last week, the Fowlkes were stunned to receive letters from the hospital and a collection service demanding \$50,739.70. They were told Kaiser had not paid the full bill and the Fowlkes had 30 days to pay or be turned over to credit bureaus.

About 6,000 Southern California Kaiser members like the Fowlkes have received billing notices over the past week from eight Prime Healthcare Services hospitals, including West Anaheim and two others in Orange County. The massive and unprecedented collection attempt is part of an accelerating dispute between Kaiser and the controversial hospital chain founded by Dr. Prem Reddy.

"We don't have the resources, nor do we owe the money," said David Fowlkes, a 61-year-old map editor.

Stung consumers are complaining to state insurance regulators about the so-called "balance billing" practice where out-of-network doctors or hospitals try to collect the difference between their charges and what the insurer paid.


For now, sending out such bills is not illegal, although state officials say consumers are not financially responsible for treatment covered in their health plans. But because patients may wrongly pay and collection efforts can be aggressive, the state is

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Page 3 of 3

THE ORANGE COUNTY
REGISTER
ocregister.com

The bills sent to Kaiser patients advise them that they may contact Kaiser and include the HMO's toll-free number.

In March, Kaiser reached an \$8 million settlement with Tenet Healthcare over a lawsuit brought by 20 California hospitals, claiming they were owed \$16 million in bills.

Chu of Kaiser said that Prime Healthcare's hospitals have in some cases submitted outrageous charges that Kaiser has challenged.

Westminster police detective Glenn Finley spent three days at Huntington Beach Hospital last summer after experiencing chest pain. He says Kaiser paid almost \$18,000 of a \$22,000 bill. After receiving a \$4,451.42 bill last week for the difference, he filed a grievance with Kaiser.

"Hell no, I'm not going to pay," said Finley, 42. "You think people don't like being called by a collection agency, I'm going to be the other guy who calls the collection agency every day."

In the case of Vicki Fowlkes, Kaiser paid only \$7,000 of the \$57,000 bill, saying she should have been transferred to a Kaiser hospital, according to David Fowlkes. Fowlkes said he immediately notified Kaiser when his wife was taken to West Anaheim.

"I'm not medically trained and don't know what the criterion is for transfer," David Fowlkes said. "I figured Kaiser would follow through on it. I also thought the hospital would cooperate with Kaiser, which obviously they don't. We're just sort of squeezed in the middle."

The state Department of Managed Health Care is holding a public hearing Wednesday in Irvine on proposed balance billing regulations. The public is invited to comment at 10:30 a.m. at the Irvine Marriott, 18000 Von Karman Ave. To reach the department's HMO Help Center, call 888-466-2219. For information on the proposed regulations, go to the Web site for the Department of Managed Health Care.

Contact the writer: 714-796-3686 or cperkes@ocregister.com

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THE ORANGE COUNTY
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seeking to ban the practice. A public hearing on the proposed regulations will be held next week in Irvine.

"It's always been the department's position that an enrollee should not be balance billed for the services received," said Richard Martin, a deputy director for the California Department of Managed Health Care, adding that he has never seen collection efforts "to this magnitude."

Since May 2, about 60 Kaiser health plan members have complained to the state. By comparison, since 2004, 90 consumers have complained about efforts by a hospital or doctor to collect the remainder of a bill.

Kaiser has received thousands of calls from worried members, said Dr. Ben Chu, president of Kaiser's Southern California region. Thursday afternoon, Kaiser began calling members to assure them they are not responsible for the bills. Letters will follow next week.

"We're very upset that this has happened," Chu said. "To put our members right in the middle and to scare them completely unnecessarily and threaten to trash their credit rating is just totally uncalled for."

When Reddy bought three local hospitals in 2006 – West Anaheim, Huntington Beach Hospital and La Palma Intercommunity – he

made no secret of his unusual approach to dealing with reimbursement from health plans like Kaiser. About 385,000 Orange County residents have Kaiser insurance.

Reddy canceled HMO contracts that he said didn't pay a fair rate for care, allowing him to then bill health plans at a higher cost when their customers came to the emergency room. Additionally, he refused to automatically transfer patients to other hospitals, saying that would jeopardize patient safety.

Health plans that don't have a contract with a hospital are required to pay a reasonable rate, said Martin from the state.

"The question is what is that reasonable value?" Martin said.

And that's where the dispute lies.

In December, Reddy's three local hospitals sued Kaiser, alleging \$10 million in unpaid bills. Reddy said the for-profit hospitals can't afford to forgo fair payment for treating Kaiser's patients.

"We really don't want the patients to pay us," Reddy said. "Patients are the only messengers to the health plans. They should call and say, 'We paid you dearly, how come you don't pay for my emergency care?'"

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SUPERIOR COURT OF CALIFORNIA

ORANGE COUNTY - CENTRAL JUSTICE CENTER

CIVIL DEPARTMENT CALENDAR SCHEDULING CHART

Ex Parte applications must comply with California Rules of Court, rules 3.1200 - 3.1207
Court Local Rules are located at www.occourts.org

Dept.	Judicial Officer	Motion Days and Time	Ex Parte Days and Time	Notice to Courtroom the day before the hearing but no later than:	Application and Proposed Order presented to the court the day before the hearing but no later than:	Rulings posted on Internet?	Other Call for available dates.
C62	MILLER 714-834-4395	Tuesday 1:30 p.m.	T, W, Th, F 8:30 a.m.	9:00 a.m.	4:00 p.m.	Yes- noon day of hearing	<p>If Monday is a holiday, law and motion is heard on Thursday at 1:30 p.m.</p> <p>NOTE: for L&M, Dept. C62 requires parties call the dept. to check availability of a motion date prior to filing their motion by calling (714) 834-4395. To schedule an ex parte matter the moving party/attorney shall contact the courtroom clerk (714) 834-4395 to reserve a date no later than noon, the day prior to the hearing.</p> <p>Teleconference appearances are voluntary and do not require consent by court or other parties. However, the court reserves the right to reject any request. Teleconference appearances are conducted in conformity with the guidelines, which are available by calling CourtCall, LLC at (310)914-7884 or (888) 88-COURT</p>
C7	MOBERLY 714-834-4656	Tuesday 2:00 p.m.	M, W, Th, F 1:30 p.m.	Noon	3:00 p.m.	Yes - 4:30 p.m. the day before	<p>If Monday is a holiday, law and motion is heard on Thursday at 2:00 p.m. If there is no appearance for argument, the court will order the tentative ruling to become effective and final the date of the hearing.</p> <p>To schedule an ex parte matter the moving party/attorney shall contact the courtroom clerk (714) 834-4656 to reserve a date no later than noon, the day prior to the hearing.</p>
C16	MONROE 714-834-4694	Tuesday 2:00 p.m.	T, W, Th 8:30 a.m.	Noon	4:00 p.m.	Yes - by 4:00 p.m. the day before	

SUPERIOR COURT OF CALIFORNIA**ORANGE COUNTY – CENTRAL JUSTICE CENTER****CIVIL DEPARTMENT CALENDAR SCHEDULING CHART****Ex Parte applications must comply with California Rules of Court, rules 3.1200 – 3.1207****Court Local Rules are located at www.occourts.org**

Dept.	Judicial Officer	Motion Days and Time	Ex Parte Days and Time	Notice to Courtroom the day before the hearing but no later than:	Application and Proposed Order presented to the court the day before the hearing but no later than:	Rulings posted on Internet?	Other Call for available dates.
C28	LEWIS 714-834-5532	Monday 10:30 a.m.	T, W, Th 8:30 a.m.	10:00 a.m.	2:00 p.m.	Yes - noon Friday before	Late ex parte applications shall not be accepted. Teleconference appearances are voluntary and do not require consent by court or other parties. However, the court reserves to right to reject any request. Teleconference appearances are conducted in conformity with the guidelines, which are available by calling CourtCall, LLC at (310)914-7884 or (888) 88-COURT
C3	MAKINO 714-834-3888	Friday 9:00 a.m.	M,T,W,Th 8:45 a.m.	10:00 a.m.	2:00 p.m.	Yes	Once tentative ruling is posted NO continuance will be granted or hearing cannot be taken off calendar
C19	MARGINES 714-834-4528	Wednesday 1:30 p.m.	Daily 1:30 p.m.	10:00 a.m.	10:30 a.m.	No	Notice must be given to opposing party by 10:00 a.m. day before ex parte hearing.
C21	MCEACHEN 714-834-4680	Tuesday 1:30 p.m.	M, T, W, Th 9:00 a.m.	9:00 a.m.	3:00 p.m.	yes	

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.

(3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its Web site as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is